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June 30, 2011

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#### Via Electronic Filing and Regular Mail

Mr. Lester A. Heltzer Executive Secretary National Labor Relations Board 1099 14th Street, N.W. Washington, D.C. 20570

Re: SecuPrint, Inc. d/b/a DPI and Graphic Communications Conference /

International Brotherhood of Teamsters, Local 503M,

Case No. 3-RC-12019

Dear Mr. Heltzer:

This firm represents the Petitioner Graphic Communications Conference / International Brotherhood of Teamsters, Local 503 M ("Union") in the above referenced case.

Pursuant Rule 102.67(g) of the regulations of the National Labor Relations Board, enclosed are eight (8) copies of the Union's Brief on behalf of the Charging Party with the statement of service required by Rule 102.67(k)(2).

Thank you for your consideration. If you have any questions, please contact me.

Respectfully submitted,

**BLITMAN & KING LLP** 

Daniel Kornfeld

DEK/tss Encl.

cc: Todd R. Shinaman, Esq. (w/ encl.)
Attorney for the Employer



June 30, 2011 Page 2

Michael J. Israel, Acting Regional Director (w/ encl.) NLRB Region 3

Michael Stafford, President (w/ encl.) GCC / IBT Local 503

(clr/dek/IBT503/DPI Seuprint/Ltr. to Heltzer2)

### UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

	)	
SECUPRINT, INC. d/b/a DPI,	)	
Employer / Respondent,	)	Case No. 3- RC - 12019
and	) )	
GRAPHIC COMMUNICATIONS CONFERENCE, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 503-M,	) ) )	
Union / Petitioner.	) ) )	

# BRIEF ON BEHALF OF THE CHARGING PARTY

# BLITMAN & KING, LLP

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### Of Counsel:

Daniel Kornfeld, Esq.

Pursuant to Rule 102.67(g) of the regulations of the National Labor Relations Board, Petitioner Graphic Communications Conference / International Brotherhood of Teamsters, Local 503-M ("Union" or "Petitioner") hereby submits its Brief on Review in support of the Acting Regional Director's May 20, 2011 Decision ("Decision") in the above captioned case. For the reasons stated in the Union's Post-Hearing Brief, the Union agrees that the petitioned for unit is an appropriate bargaining unit for purposes of collective bargaining. Rather than reiterate all of the arguments from the Union's Post-Hearing Brief, the Union hereby incorporates that Brief by reference. In this brief, the Union explains simply why the Board should affirm the Acting Regional Director's decision.

The Acting Regional Director correctly decided that the Press Department employees in this case have specialized skills, training, and working conditions long recognized by the Labor Board as embodying a distinct community of interest known as the "Traditional Lithographic Unit." *See* Decision pgs. 20-26; *AGI Klearfold LLG*, 350 NLRB 538, 541 (2007). The Board should uphold this exclusion of the Press Department employees from the bargaining unit in accordance with this craft distinction. As the McFadden brothers succinctly testified, the animosity against the Press Department employees because of their preferential treatment prevents their inclusion in the bargaining unit at issue in this case. *See* Tr. pgs. 168, 200.

The Acting Regional Director correctly recognized the critical facts as follows:

- i. The interchange of job duties among the employees is relatively minimal;
- ii. The Press Department employees are more highly skilled than the employees in the other Departments;
- iii. The Press Department employees require separate training before they can operate the presses;
- iv. The Press Department employees are paid more than other production employees;

- v. The Press Department employees work on a different schedule from other employees;
- vi. The Press Department employees receive preferential treatment with respect to lay-offs; and
- vii. The Employer failed to prove any meaningful functional integration between the Press Department employees and the employees in other Departments.

The Employer mistakenly elevates the factor related to contact among the employees or supervision above all the other factors for determining a community of interest. There are, of course, twelve (12) factors that the Board considers in determining the community of interest for an appropriate bargaining unit. *See NLRB Outline of Law and Procedure in Representation Cases* §12-210 (August 2008). Unit questions are resolved by weighing *all* of the relevant factors, and the Employer errs by overemphasizing the contact and supervisory factors.

The idea that the employees work in the same building, use the same lunchroom, and answer to the same manager cannot override the other material factors that determine a community of interest. In this case, the Press Department employees have distinct financial and related interests that conflict with the interests of employees in the other departments. Indeed, it is telling that on cross examination Vice President Jason Colline flatly rejected the notion of paying a Press Department employee \$20 per hour to work on the bindery equipment. *See* Tr. pg. 51. This testimony vividly demonstrates how the Press Department employees have separate concerns from, and should not be included in a unit with, the other employees.

Second, the Employer ignores the lack of actual integration and interchangeability of the employees that is necessary for the Employer to overcome the presumption that Press

Contrary to the Employer's suggestions, the Board should draw no conclusion from Employer Exhibits 3, 4, and 5. These photographs are unreliable to the extent that they depict a Press Department employee, Chris Costales, working on Bindery Department equipment purely to confuse the record. See Tr. pg. 88, 171. See also, Croxton v. Duke Power Co., 181 F.2d 306, 308-09 (4th Cir. 1950) (excluding photographs from evidence because they were misleading and prejudicial).

Department employees do not share a community of interest with other employees. *See Journal-Times Co.*, 209 NLRB 745, 746 - 47 (1974) (stating "as a result of their training, every employees in the new department is skilled in every job function performed in the pressroom, including the contiguous platemaking area. These jobs rotate among the employee daily . . . The record clearly establishes that all of the pressroom employees perform all of the jobs in the press department"); *Continental Can Co.*, 171 NLRB 798, 800 (1968) (noting that "the pressman, the core of the unit, spend approximately 30 percent of their time in nonprinting duties and they oversee the work of employees in nonprinting classifications who operate the trailing coater and the stacking oven and who work interchangeably on the coater and press lines").

Here, the Press Department employees do not routinely work in the Shipping, Bindery, or other Departments. *See* Tr. pgs. 54-55, 64, 82-85, 171. In fact, the McFadden brothers seldom, if ever, saw Press Department employees working in the Bindery or Shipping Departments, and they never saw the other department employees working on the presses. *See* Tr. pgs. 154-155, 187-88. Consequently, the Employer did not prove - and cannot prove - that Press Department employees operate all of the equipment in the production area, or that the Press Department employees spend more than thirty percent (30%) of their time working in the other Departments. Therefore, the exception to the "Traditional Lithographic Unit" is not applicable, and the Acting Regional Director correctly excluded the Press Department employees.

Lastly, the Employer's attempts to distinguish *Continental Web*, 262 NLRB 1395 (1982), are unpersuasive because the attempts again conflate the importance of the criteria involving employee contact. In the instant case, the crucial issues relate to employee interchange and functional integration as describe above. During the hearing, the evidence proved that Press Department employees rarely if ever work outside their Department and their work is not integrated, or coextensive, with the work of other employees. *Continental Web*, therefore,

supports the Acting Regional Director's conclusion that employee contact is immaterial in this case compared to the absence of employee interchange and functional integration.

More importantly, the Employer's arguments about *Continental Web* miss the importance of the ultimate disposition of that case. In the end, the United States Court of Appeals for the Seventh Circuit denied enforcement of the Board's order, in part, out of recognition that "lithographers" are a "skilled craft" with different training, abilities, responsibilities, pay, schedules, and working conditions from other employees. *See Continental Web Press, Inc. v. NLRB*, 742 F.2d 1087, 1091-92 (7th Cir. 1984). The Seventh Circuit through Judge Posner held that the preparatory and press department employees should be included in a single unit because they are all "lithographic" employees to be separated from other employees. *Id.* at 1094. The foundation of that decision was that lithographic employees are entitled to a distinct bargaining unit because they do not share a community of interest with general workers outside the skilled craft. *Id.* at 1092 (stating "for many years, through many changes of Administration, the Board has been saying that pressmen and preparatory employees compose one unit in lithographic printing plants").

By focusing myopically on the factor of employee contact, the Employer completely misconstrues *Continental Web* to suggest that Press Department employees belong in a bargaining unit with other workers. On the contrary, *Continental Web* supports the Acting Regional Director's determination that the Press Department employees do not share a community of interest with the employees laboring under different wages, hours, and working conditions. The Employer's Request for Review must fail because it would undermine collective bargaining to add employees with conflicting interests to the others already in the unit.

Based upon the reasons and authorities set forth above and in the Petitioner / Union's Post-Hearing Brief, the Petitioner respectfully requests that the Board affirmed the Acting Regional Director's determination that the appropriate unit is the one set forth in the Petition.

DATED: June 30, 2011

**BLITMAN & KING LLP** 

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#### **CERTIFICATE OF SERVICE**

The undersigned certifies that on the date set forth below, he electronically filed the foregoing Opposition to the Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election with the National Labor Relations Board using the electronic filing system as well as sending eight (8) copies to the Executive Secretary in accordance with Rule 102.67(k) of the regulations of the National Labor Relations Board. The undersigned further certifies that he served a copy of the same by depositing it in the United States mail, postage prepaid, addressed as follows to the following:

Michael Israel, Acting Regional Director National Labor Relations Board, Region 3 Niagara Center Bldg., Suite 630 130 South Elmwood Avenue Buffalo, New York 14202

Todd R. Shinaman, Esq. Nixon Peabody 1300 Clinton Square Rochester, New York 14604

DATED: June 30, 2011

**BLITMAN & KING LLP** 

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